UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Amare Gurmu Solomon,

Debtor.

Bky. No. 12-33993
(Chapter 7)

Amare Gurmu Solomon,

Plaintiff,

vs.

Student Loan Finance Corporation,
Education Loans Incorporated, and GOAL
Funding II, Inc.,

Defendants.

Adv. No. 12-03276

NOTICE OF HEARING AND MOTION

TO: To Plaintiff Amare Gurmu Solomon and his attorney James C. Whelpley, 2151 North Hamline Avenue, Suite 202, Roseville, MN 55113

1. Defendants Student Loan Finance Corporation, Education Loans Incorporated, and GOAL Funding II, Inc., move the Court for the relief requested below and give notice of hearing.

2. The court will hold a hearing on this Motion at 2:00 p.m. on June 13, 2013, in Courtroom No. 2A, at the Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and served not later than June 15, 2013, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 AND 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 Case was filed July 4, 2012. The case 9is no pending in this Court.

5. The Motion arises under 11 U.S.C. § 523(a)(8) and Fed. R. Bankr. P. 7056. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 7007-1, 9013-1, and 9013-2. Movants request relief with respect to Plaintiff's Amended Adversary Complaint. Specifically, Movants request that the Court find that the debts referenced in Plaintiff's Amended Adversary Complaint are excepted from discharge under 11 U.S.C. § 523(a)(8).

WHEREFORE, Defendants Student Loan Finance Corporation, Education Loans Incorporated, and GOAL Funding II, Inc., move the Court for an order:

1. Adjudging that the debts referenced in the Amended Adversary Complaint are excepted from discharge pursuant to Section 523(a)(8) of the Bankruptcy Code; and

2. Such other relief as may be just and equitable.

Dated: May 15, 2013

FRUTH, JAMISON & ELSASS, PLLC

By: s/ Adam A. Gillette

Adam A. Gillette (#0328352)
Lori A. Johnson (#0311443)
3902 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 344-9700
Facsimile: (612) 344-9705
agillette@fruthlaw.com
ljohnson@fruthlaw.com

ATTORNEYS FOR STUDENT LOAN FINANCE CORPORATION

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DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendants Student Loan Finance Corporation ("SLFC"), Education Loans Incorporated ("EdLinc") and GOAL Funding II, Inc. ("GOAL") respectfully submit this memorandum in support of their motion for summary judgment. Plaintiff/Debtor Amare Gurmu Solomon ("Solomon") is listed as the cosigner on three loans that are in default. These loans are held or serviced by Defendants. By their terms, these loans are educational loans that were paid to the University of Minnesota on behalf of a student attending the university. Student loans like this are not dischargeable under 11 U.S.C. § 523(a)(8)(A). However, Solomon asserts that the guaranties are not educational loans and are therefore, dischargeable. But most courts have held that guaranties or promissory notes are excepted from discharge. As discussed below, the plain language of Section 523(a)(8)(A), the legislative history and the bulk of persuasive authority establish that Solomon's debt to Defendants is not dischargeable. Therefore, Defendants respectfully request that the Court grant their motion for summary judgment.

BACKGROUND

During the early 2000's, Samuel Bankole applied for three student loans from Academic Funding Group ("AFG"). (Stipulated Statement of Facts ("Stip.") ¶ 1.) These loans were serviced by SLFC. (*Id.*) In connection with each loan, Bankole submitted an "Application and Promissory Note." (*Id.* ¶ 2, Exs A-C). The Application and Promissory Noted required Bankole to state the school which would receive the loan amount. (*Id.*) Each application listed the school receiving the loan as the loan as the University of Minnesota/Twin Cities. (*Id.*)

The first page of each application contains a promissory note. (Stip. ¶ 6; Exs A-C.) On each of the three applications Bankole submitted, Solomon is listed as the cosigner. (*Id.*) On the reverse side of each application are the promissory notes' terms and conditions. (Stip. ¶ 7, Exs A-C.) The terms and conditions state that the "proceeds of this loan will be used only for educational expenses at the school that has certified the application to which this Promissory Note applies." (*Id.*) The terms and conditions also require the borrower to certify that "the proceeds for this loan will be used for educational expenses at the school named for the loan period stated on the Application." (Stip. ¶ 8; Exs A-C.)

In addition, the terms and conditions include a section entitled "Notice to Cosigner(s)" which states that a cosigner to the loan is "being asked to guarantee this debt." (Stip. ¶ 9; Exs A-C.) The section informs the cosigner that they "may have to pay the full amount of this debt if the Borrower does not pay" as well as "late charges and collections costs which *increase this amount*." (*Id*.)

The first student loan Bankole applied for from AFG was for $2,500, to fund the academic period from June 17, 2003, to September 12, 2003, i.e., the summer session during the 2002-2003 academic year. (Stip. ¶ 3; Ex. A.) This Application and Promissory Note is known as Number 510 and is currently held by EdLinc. (Stip. ¶ 3.) Bankole also submitted an Application and Promissory Note to AFG for a $4,500 loan. (Stip. ¶ 4; Ex. B.) This loan also identified the summer session of the 2002-2003 academic year as the period which the loan would help fund. (*Id*.) This Application and Promissory Note is known as Number 511 and is held by EdLinc. (Stip. ¶ 4.) The third loan at issue took place after Bankole submitted an Application and Promissory Note to AFG for an $11,000 loan to cover the academic year from September 29, 2003, through May 22, 2004. (Stip. ¶ 5; Ex. C.) This Application and Promissory Note is known as Number 512 and is currently held by GOAL. (Stip. ¶ 5.)

Bankole defaulted on the loans. (Stip. ¶ 10.) SLFC informed Solomon that Bankole defaulted. (Stip. ¶ 11.) As part of his Chapter 7 bankruptcy, Solomon commenced this adversary proceeding seeking a determination as to whether the promissory notes are dischargeable. (*See* Amended Adversary Complaint ("Compl.") ¶ 1.)

ARGUMENT

I. STANDARD OF REVIEW

Summary judgment is appropriate where there is no disputed question of material fact, leaving only a question of law to resolve a dispute. *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986); Fed. R. Civ. P. 56(c) as incorporated by Fed. R. Bankr.P. 7056 (allowing grant of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"). Here, the question of law before the court is whether the promissory notes contained in the three AFG Application and Promissory Notes are dischargeable. Since the promissory notes are not dischargeable, Defendants are entitled to summary judgment.

II. STUDENT LOANS GUARANTIES ARE NOT DISCHARABLE.

Individuals filing for relief under Chapter 7 of the Bankruptcy Code seek to obtain an immediate discharge of their debts. *Schultz v. U.S*., 529 F.3d 343, 346 (6th Cir. 2008). *See* 11 U.S.C. §§ 701-784. However, for public policy reasons, Congress placed certain categories of debt outside the scope of a bankruptcy discharge. 11 U.S.C. § 523(a). One of the debts excluded from a bankruptcy discharge are those debts incurred by a debtor to finance a higher education. A primary reason for this exclusion is to protect the student-loan program from potential insolvency. *Roberts v. U.S. Dep't of Educ. (In re Roberts),* 442 B.R. 116, 118 (Bankr. N.D. Ohio 2010)(citing Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93137, 93rd Cong., 1st Sess., Pt. II 140, n. 14 (1973)).

Solomon asserts that the exception to discharge set forth in Section 523(a)(8) does not apply to him for three reasons. First, Solomon argues that the guaranties are not educational loans. (Compl. ¶ 7.) Second, Solomon claims that he "did not realize any benefit, educational or financial" from co-signing the promissory notes.[1] (*Id.* ¶ 9.) Finally, Solomon asserts that there was no consideration for his obligation as co-signer. (*Id.* ¶ 11.)

A. The Loans are Education Loans.

Solomon's first argument is easily dismissed. By their plain terms, the Application and Promissory Notes are educational loans. (*See* Stip. Exs. A-C.) The Application and Promissory Notes twice list the "University of Minnesota/Twin Cities" as the school that Bankole will attend with the proceeds from the loans. *Id*. The Notes also list the academic year that the loans will help fund. *Id*. In the definitions section of the Promissory Notes' Terms and conditions, the loans provide that they are disbursed "made by check payable to the school . . . for and on behalf of the student." *Id*. Further, the additional agreements section provides:

> I understand that *this loan is an educational loan* and may be made in part through a non-profit organization, including the school, and as such, may not be dischargeable in bankruptcy, except pursuant to 11 U.S. Code 523(a)8.

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[1] A determination regarding the applicability of this provision, as it concerns the dischargeability of a particular debt, is deemed to be a core proceeding. 28 U.S.C. § 157(b)(2)(I). Accordingly, as a "core proceeding," the Court has jurisdictional authority to enter final orders and judgments on Solomon's Amended Complaint. 28 U.S.C. § 157(b)(1).

Id. (emphasis added). Plainly, there is no legitimate dispute that the loans in question are in fact, education loans. The Court should grant summary judgment in favor of Defendants on this issue.

B. Whether Solomon received an educational benefit from the loans is irrelevant.

Solomon claims that because he is a co-signer on the loans, he did not receive a benefit from the loans and, accordingly, his obligations are dischargeable. Numerous cases have addressed whether a debtor's debt as co-maker of notes signed for another person's student loans falls within Section 523(a)(8). The vast majority of those cases have held that such debt is not dischargeable.

11 U.S.C. § 523(a)(8) provides that:

> A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> . . .
>
> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
>
> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
>
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
>
> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986,[2] incurred by a debtor who is an individual[.]

[2] "The term 'qualified education loan' means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses . . . ." 26 U.S.C.A. § 221 (d)(1).

Both Section 523(a)(8)(A) and (8)(B) apply to bar discharge in this case. Solomon has "an obligation to repay funds received as an educational benefit," and is not discharged "from any debt . . .for . . . any other educational loan . . . ." *Id.* The plain language of Section 523(a)(8)(B) clearly applies to bar discharge in this case. However, Solomon asks the Court to disregard the clear language of the statute and essentially write in a provision that provides that the debt is not dischargeable unless the debtor received some personal benefit in cosigning on the note. (Compl. ¶¶ 9-10.)

The vast majority of courts and the only circuit court to address the issue have refused this invitation. Instead, these courts have followed the plain language of the statute and held that a co-obligor's liability for educational debt incurred for the benefit of another is not dischargeable under Section 523(a)(8). *See In re Pelkowski*, 990 F.2d 737 (3rd Cir. 1993) (holding that obligation debtor incurred for her children's education was educational loan within meaning of statutory exception to discharge and that exception applies to both debts of student borrowers and to obligations incurred by their non-student co-obligors); *Vitzhum v. Educap, Inc., (In re Vitzthum)*, No. 09-21577-DRD-7, 2011 WL 3957273, at *3 (Bankr. W.D. Mo. Sept. 7, 2011) (holding Section 523(a)(8) applies to Debtors as non-student co-obligors who did not use any of the loan proceeds for their benefit); *Prouty v. JP Morgan Chase & Co.(In re Prouty)*, No. 08-11757, 2010 WL 3294337, at *9 (Bankr. D. Kan. Aug. 19, 2010) (rejecting debtor's argument that Section 523(a)(8) did not apply to her debt because she signed the notes as co-debtor and she did not receive a benefit from the student loans); *Kuschel v. Kuschel (In re Kuschel)*, 365 B.R. 910, 916 (Bankr. E.D. Mo. 2007) (holding that debtor's obligation under consolidation note was not dischargeable even though she did not receive the full educational benefit of the consolidation loan at issue); *Clark v. Educ. Credit Mgmt Corp. (In re Clark),* 273 B.R. 207, 210 (Bankr. N.D. Iowa 2002) (discharge exception governing student loan debt applies to educational loan made to parent of student when parent is sole obligor); *Lawson v. Sallie Mae, Inc. (In re Lawson),* 256 B.R. 512, 517 (Bankr. M.D. Fla. 2000) (loan excepted from discharge even though debtor was non-student co-obligor who received no educational benefit from loan); *In re Norris*, 239 B.R. 247, 251(M.D. Ala. 1999) (section 523(a)(8) does not differentiate between debtor who is loan beneficiary and debtor who is parent of loan beneficiary); *Stein v. Bank of New England (In re Stein),* 218 B.R. 281, 283 (Bankr. D. Conn. 1998) (court unable to afford relief to non-student debtor because Section 523 "does not distinguish between student and non-student obligors"); *James v. United Student Aid Funds, Inc. (In re James),* 226 B.R. 885 (Bankr. S.D. Cal. 1998) (finding that Section 523(a)(8) applies to non-student debtors who are sole obligors on educational loan); *Salter v. Educ. Res. Inst., Inc. (In re Salter),* 207 B.R. 272, 275 (Bankr. M.D. Fla.1997) (determining that under Section 523(a)(8), proper focus should be on kind of debt involved rather than how money was spent or who was borrower); *Karben v. Elsi (In re Karben),* 201 B.R. 681 (Bankr. S.D.N.Y. 1996) (finding that language of § 523(a)(8) does not refer to student debtor, but applies to individual debtor for any debt); *Uterhark v. Great Lakes Higher Educ. Corp. (In re Uterhark)*, 185 B.R. 39 (Bankr. N.D. Ohio 1995) (stating there is nothing in language of § 523(a)(8) which limits its application to recipient of educational benefits); *Education Res. Inst., Inc. v. Garelli (In re Garelli)*, 162 B.R. 552 (Bankr. D. Or. 1994) (concluding that under § 523(a)(8), proper focus is on particular kind of debt involved rather than how money was spent or nature of debtor); *In re Palmer,* 153 B.R. 888 (Section 528(a)(8) applies to non-student debtors); *Mackey v. Nebraska Student Loan Program, Inc. (In re Mackey),* 153 B.R. 34 (Bankr .N.D. Tex. 1993) (relying on *Dull v. Ohio Student Loan Comm'n (In re Dull*), 144 B.R. 370 (Bankr. N.D. Ohio 1992)) (language of Section 523(a)(8) is all-inclusive and fact that debtor received no educational benefit from loan did not excuse her from provisions of that section).

The Eighth Circuit has warned that "Courts are obligated to refrain from embellishing statutes by inserting language that Congress has opted to omit." *Root v. New Liberty Hosp. Dist*., 209 F.3d 1068, 1070 (8th Cir. 2000) (citing *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993)). Like the vast majority of courts that have confronted this issue, the Court should find that Solomon's debt as a co-signatory on the student loans is not excepted from discharge.

Consistent with the Eighth Circuit's admonition in *Root*, most courts that have addressed this issue have refused to impose limitations on Section 528(a)(8) that are not written into the statute. *See, e.g., Medford Sav. Bank v. Flibotte (In re Flibotte)*, No. 92-19655-JNF, 1993 WL 816068 at *2 (Bankr. D. Mass. July 12, 1993) (plain language of Section 523(a)(8) contains no reference or distinction based upon debtor's status as borrower); *Education Res. Inst., Inc. v. Wilcon (In re Wilcon)*, 143 B.R. 4, 5 (D. Mass. 1992) ("The plain language of 11 U.S.C. § 523(a)(8) mandates that *any* debt incurred by an *individual* debtor for an educational loan . . . is nondischargeable" absent a showing of undue hardship); *Webb v. Student Loan Funding Corp. (In re Webb),* 151 B.R. 804, 806

(Bankr. N.D. Ohio 1992) (". . . Congress did intend Section 523(a)(8) to apply to all student loan borrowers regardless of their status as co-makers, sureties, or non-student borrowers."); *In re Koeppen*, No. 391-32208-H13, 1991 WL 544026, at *2 (Bankr. D. Or. Oct. 29, 1991) ("Since a literal application of the [unambiguous language of the] statute does not lead to an absurd result, the statute must be applied as written so as to preclude discharge of [the cosigner's] debt."); *Education Res. Inst., Inc. v. Martin (In re Martin)*, 119 B.R. 259, 261 (Bankr. E.D. Okla. 1990)(finding the plain language and legislative history of the statute support the determination that educational loans are not dischargeable even though not for the benefit of the debtors); *Hudak v. Union National Bank of Pittsburgh (In re Hudak)*, 113 B.R. 923, 924 (Bankr. W.D. Pa. 1990) ("The fact that Debtor is not a student borrower is not controlling."); *Taylor v. Tennessee Student Assistance Corp. (In re Taylor)*, 95 B.R. 550, 552 (Bankr. E.D. Tenn. 1989) ("The language of § 523(a)(8) is all inclusive, and the fact that the debtor did not receive the benefits of the loans does not exclude her from its provisions."); *Education Res. Inst., Inc. v. Hammarstrom (In re Hammarstrom)*, 95 B.R. 160, 162 (Bankr. N.D. Cal. 1989) ("The language of section 523(a)(8) does not limit its application to educational loans in which the student is the borrower."); *Barth v. Wisconsin Higher Educ. Corp. (In re Barth)*, 86 B.R. 146, 149 (Bankr. W.D. Wis. 1988) (Section 523(a)(8) is not limited to student debtors, but instead includes all debtors with liabilities on educational loans).

A small minority of older cases[3] have concluded that the exception to discharge found in Section 523(a)(8) does not apply to non-student co-obligors of educational loans. *See Pryor v. H & W Recruiting Enter., LLC (In re Pryor),* 234 B.R. 716 (Bankr. W.D. Tenn. 1999); *Kirkish v. Meritor Savings Bank* (*In re Kirkish)*, 144 B.R. 367, 369 (Bankr. W.D. Mich. 1992); *Northwestern Univ. Student Loan Office v. Behr (In re Behr),* 80 B.R. 124, 127 (Bankr. N.D. Iowa 1987); *Zobel v. Iowa College Aid Comm'n (In re Zobel)*, 80 B.R. 950, 952 (Bankr. Iowa 1986); *Bartsch v. Wisconsin Higher Educ. Corp. (In re Meier),* 85 B.R. 805, 807 (Bankr. W.D. Wis. 1986); *In re Bawden*, 55 B.R. 459 (Bankr. M.D. Ala.1985); *Washington v. Virginia State Educ. Assistance Auth. (In re Washington)*, 41 B.R. 211, 214 (Bankr. E.D. Va. 1984); *In re Boylen*, 29 B.R. 924 (Bankr. N.D. Ohio 1983) (all holding such debt dischargeable as to co-signor).

While conceding that the statute's plain language is not limited to student debtors, the minority courts found the plain language of statute was ambiguous and agreed with the debtors that parties who do not receive any educational benefit from student loans should be able to discharge them.

These cases were wrongly decided. The statute is not ambiguous and there is nothing in the language of the statute to support the notion that Section 523(a)(8) only apply to student debtors. *Pietras v. U.S. Dep't of Education (In re Pietras)*, 10-3169, 2011 WL 4352381 (Bankr. N.D. Ohio Sept. 16, 2011) (rejecting the argument that since debtors were not the direct beneficiary of the student loans, the obligations incurred by

[3] The most recent of the cases adopting the minority view was decided fourteen years ago. *See Pryor v. H & W Recruiting Enter., LLC (In re Pryor)*, 234 B.R. 716 (Bankr. W.D. Tenn. 1999).

Mrs. Pietras as co-signatory did not qualify as educational debts for purposes of § 523(a)(8)); *Prouty*, 08-11757, 2010 WL 3294337, at *9 (rejecting debtor's argument that § 523(a)(8) did not apply to her debt because she signed the notes as co-debtor and she did not receive a benefit from the student loans); *James v. United Student Aid Funds, Inc. (In re James)*, 226 B.R. 885, 887 (Bankr. S.D. Cal. 1998) (finding no requirement in Section 523(a)(8) that the loans be for the direct educational benefit of the borrower and explaining that "[i]n analyzing the exception to discharge under this section, the focus should be on the nature of the debt and the lender rather than on the status of the debtor."); *Owens v. Nebraska Higher Educ. Loan Program, Inc. (In re Owens)*, 161 B.R. 829, 830 (Bankr. D. Neb. 1993) (explaining that "the statutory language of § 523(a)(8) reveals that there is no requirement that the debtor be the student").

Moreover, there is nothing in the legislative history of the statute to support the notion that Section 523(a)(8) only applies to student debtors. *See Varma v. Educ. Res. Inst., Inc. (In re Varma)*, 149 B.R. 817, 818 (N.D. Tex. 1992) (Congress did not intend to limit dischargeability exception to student borrowers); *In re Hammarstrom*, 95 B.R. 160, ("This legislative history offers no basis for not enforcing the literal language of section 523(a)(8) to bar the discharge of educational loans signed by a student's parent."); *Educ. Res. Inst., Inc. v. Selmonosky (In re Selmonosky)*, 93 B.R. 785, 787 (Bankr. N.D. Ga. 1988)("[T]here is no legislative history which would warrant a reading of § 523(a)(8) as applying only to student debtors."); *Feenstra v. New York State Higher Educ. Serv. Corp. (In re Feenstra)*, 51 B.R. 107, 110 (Bankr. W.D.N.Y. 1985)("The policy behind §

523(a)(8) was to give all educational loans, special treatment in bankruptcy. Namely, they were excepted from discharge.")

As one court explained:

> First, there is no clear evidence in the legislative history that Congress intended otherwise nondischargeable educational loans to be dischargeable merely because the maker of the promissory note is someone other than the student. Neither the floor debates nor the legislative history contain a single word about non-student obligors. Although there are occasional references in the legislative history to non-student co-makers, these references state only that co-makers are generally not required on educational loans.
>
> Second, the legislative history reveals that a major purpose of Congress in enacting section 523(a)(8) was to safeguard the financial integrity of educational loan programs by limiting the instances in which such obligations can be discharged in bankruptcy. This goal is served by barring discharge of educational loans signed by parents. A loan program is affected just as much when a parent discharges a loan as when a student discharges a loan.
>
> Third, even if Congress' primary goal in enacting section 523(a)(8) was to prevent abusive discharge of educational loans by students, barring discharge of educational loans signed by parents does not interfere with that goal.

In re Hammarstrom, 95 B.R. at 163. *See also In re Pietras*, 2011 WL 4352381, at *4 (quoting *In re Hawkins*, 139 B.R. 651, 653 (Bankr. N.D. Ohio 1991)("'If non-student educational loans signed by the student's parent were allowed to be discharged in this manner, then before long many students would have their parents obtain their educational loans, and have the parents file for bankruptcy shortly thereafter. This would create a legal loophole which was not intended by Congress.'"); *Lawson v. Sallie Mae, Inc. (In re Lawson)*, 256 B.R. 512, 517 (Bankr. M.D. Fla. 2000) (holding that debtor's obligation under consolidation note was not dischargeable and concluding that Congress' primary intent in enacting Section 523(a)(8) was to preserve the integrity of the student loan system).

Most courts agree that with this analysis of Congressional intent. *See, e.g., In re Pietras*, 2011 WL 4352381, at *4 (explaining that refusing to create an exception for co-signatories from discharge ensures "the integrity of the educational loan" system and is the "generally accepted approach adopted by other courts when confronted with this issue"). Finding Solomon's debt dischargeable would fly in the face of Congressional intent. The Court should follow the majority view and reject Solomon's argument that Section 523(a)(8) only applies if he received a benefit.

C. There was consideration.

Solomon's final argument is that there was no consideration for his signing the promissory notes. (Compl. ¶ 11.) Solomon's argument overlooks that the loan funds were disbursed as a result of the promissory note. South Dakota law allows parties to contract for the benefit of third parties.[4] *See, e.g.,* SDCL 53-2-6 (providing that third-party beneficiaries to contracts may be enforced by the third-party). Solomon's argument is not that there was no consideration for his signature, his argument is that the consideration *he* received was inadequate. However, South Dakota law is clear that "mere inadequacy of consideration or improvidence will not of itself be sufficient to warrant the rescission of a contract." *Olson v. Opp,* 85 S.D. 325, 328-29, 182 N.W.2d 220, 222 (S.D. 1970) (citations omitted). Solomon must show some other inequitable

[4] The Promissory Notes' Terms and Conditions state that the notes are to be construed and enforced according to the laws of South Dakota. (*See* Exs. A-C.)

incidents on the part of Defendants, which he has not and cannot do. *Id*. Solomon cannot be relieved of his obligations under the promissory notes merely because he made a bad bargain. *Id*.

CONCLUSION

Summary judgment is appropriate here because there are no factual disputes and Defendants are entitled to judgment as a matter of law. As set forth above, the loans Solomon co-signed were educational loans for which he received adequate consideration. The plain language of the statute, the legislative history and the weight of persuasive authority establish that Solomon's debt to Defendants is not dischargeable. Defendants respectfully request that the Court grant their motion for summary judgment.

Dated: May 15, 2013

FRUTH, JAMISON & ELSASS, PLLC

By: s/ Adam A. Gillette
Adam A. Gillette (#0328352)
Lori A. Johnson (#0311443)
3902 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 344-9700
Facsimile: (612) 344-9705
agillette@fruthlaw.com
ljohnso@fruthlaw.com

ATTORNEYS FOR STUDENT LOAN FINANCE CORPORATION

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Funding II, Inc.,

Defendants.

Adv. No. 12-03276

ORDER

The parties cross motions for summary judgment on this adversary proceeding came before the Court on June 13, 2013. Appearances were noted on the record. Having considered all of the pleadings and arguments of counsel, it is ordered:

1. Defendants' motion for summary judgment is granted. The debts at issue, Loans 510-512 are excepted from discharge pursuant to 11 U.S.C. § 523(a)(8).

2. Plaintiff's motion for summary judgment is denied.

Dated: __________________

____
The Honorable Gregory F. Kishel
United States Bankruptcy Judge